ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF MCIMETRO VERIZON ACCESS TRANSMISSION SERVICES LLC D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH UNITED TELEPHONE COMPANY OF INDIANA, INC. D/B/A EMBARQ UNDER SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996	)	CAUSE NO. 43373 INT 01 APPROVED: MAR 12 2008

BY THE COMMISSION:
Larry S. Landis, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On October 16, 2007, MCIMetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon" or "Petitioner") filed a Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission" or "IURC") for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the federal Telecommunications Act of 1996 ("TA 96" or "Act") to establish an interconnection agreement with United Telephone Company of Indiana, Inc., d/b/a Embarq ("Embarq" or "Respondent") in this Cause. Sections 252 (b) and (c) of the Act direct state commissions to arbitrate unresolved issues related to the obligations imposed on local exchange carriers by Sections 251(b) and (c) of the Act. The Petition enumerated unresolved issues between the Parties and included a copy of Verizon's proposed Interconnection Agreement ("Agreement" or "ICA") between the Parties showing both disputed and agreed upon language.

In accordance with 47 U.S.C. 252(b)(3), Embarq timely filed its response to Verizon's petition for arbitration on November 14, 2007. The Petition included a proposed procedural schedule, agreed to by Verizon and Embarq ("Parties"), subject to Commission approval. On November 8, 2007, the Presiding Officers issued a docket entry noting that the schedule proposed by the Parties does not comply with the timeline set forth at 47 U.S.C. Section 252(b)(4)(C), but that this extension is by agreement of the parties and therefore granted the proposed schedule and established the procedural schedule for this Cause.

On December 5, 2007, Verizon filed the direct testimony of Don Price, Director-State Regulatory Policy in the Verizon Business Regulatory and Litigation Department.

Also on December 5, 2007, Embarq filed the direct testimony of its witnesses, Jeff Lindsey, Director-Regulatory Policy, and Dr. Brian K. Staihr, Director-Policy/Regulatory Economist.

On December 19, 2007, Verizon filed the rebuttal testimony of Mr. Price, and Embarq filed the reply testimony of Mr. Lindsey and Dr. Staihr.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, the Commission convened an evidentiary hearing in this Cause on Thursday, January 10, 2008 at 9:30 a.m. EST, in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. The Indiana Office of Consumer Counselor ("OUCC"), Verizon, and Embarq appeared and the Parties were duly represented by counsel. No other party sought to intervene, and no members of the general public appeared or sought to testify at the evidentiary hearing. At the hearing, Embarq offered its direct and reply testimony as Respondent's Exhibits 1 and 2, respectively, into evidence without objection. Verizon's direct and rebuttal testimony were accepted into the record, subject to the Motion to Strike that the parties agreed would be filed after the hearing, as Petitioner's Exhibits 1 and 2, respectively.

As permitted by the procedural schedule and agreed to at the hearing, Embarq filed a Motion to Strike certain sections of Mr. Price's direct and rebuttal testimony on January 11, 2008. Verizon filed a Response to Embarq's Motion to Strike on January 23, 2008. Embarq filed a reply to Verizon's Response on January 25, 2008. On January 29, 2008, the Presiding Officers issued a docket entry granting the motion to strike in part, and denying the motion to strike in part.

1. **Notice and Jurisdiction.** Embarq and Verizon are both "public utilities" within the meaning of Indiana Code §§8-1-2. Embarq is an "incumbent local exchange carrier" as set forth in 47 U.S.C. §251(h) and Verizon is a "requesting telecommunications carrier" within the meaning of §252(a) of the Act. Pursuant to I.C. 8-1-2.6-1.5(b)(2), this Commission has authority to arbitrate a dispute between providers under 47 U.S.C. 252(b). The Commission has jurisdiction over Embarq and Verizon, as well as the subject matter of this Cause in the manner and to the extent provided by the laws of the State of Indiana and the Act.

2. **Petitioner's Organization and Business.** Verizon is a communications service provider providing facilities-based competitive local exchange, exchange access, and interexchange telecommunications services in this state pursuant to Certificate(s) of Territorial Authority issued by this Commission.

3. **Respondent's Organization and Business.** Embarq is an incumbent local exchange carrier with its principal office in Overland Park, Kansas. Embarq is a communications service provider engaged in the provision of varied telecommunications services to its customers and the general public in this state pursuant to Certificate(s) of Territorial Authority issued by this Commission.

4. **Identification of Unresolved Issues.** Pursuant to Section 252(b)(4)(A) of the Act, the Commission "shall limit its consideration" to the issues set forth in Verizon's Petition and Embarq's Response.

5. **Statutory Standards.** The Commission "shall resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to implement subsection (c) [§ 252(c)] upon the Parties to the agreement, and shall conclude the resolution of

any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this Section." Section 252(b)(4)(B) further provides:

> The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

Neither party to this proceeding refused or unreasonably failed to respond to any request by us for information.

In resolving by arbitration any open issues and imposing conditions upon the parties to the Agreement, Section 252(c) provides:

> a State commission shall:
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In light of the above standards and using the proposed orders submitted by the Parties, we summarize the Parties' positions on the open issues, as reflected in Verizon's Petition (Issues 1 and 2).

6. <u>Disputed Issues</u>.

A. ISSUE 1: What intercarrier compensation should apply to virtual NXX ("vNXX") traffic under the ICA?

1. <u>Positions of the Parties</u>.

a. *Verizon*

Don Price testified on Verizon Access's behalf. Mr. Price is Director – State Regulatory Policy in the Verizon Access Regulatory and Litigation Department. Mr. Price explained that telephone numbers assigned to the customers generally consist of ten digits in the form of NPA-NXX-XXXX. The first three digits indicate the Numbering Plan Area ("NPA"), commonly known as the area code, and the next three digits refer to the exchange code ("NXX"). Each

"NPA-NXX" is assigned to a rate center, and calls are routed to their intended destinations based upon the NPA-NXX designations.

Mr. Price observed that a telephone number is referred to as a "virtual NXX" or "vNXX" number when it is assigned to a customer in a local calling area different from the one where the customer is physically located. The parties' disagreement about vNXX calls, asserted Mr. Price, concerns the intercarrier compensation that should apply to them—specifically, which entity should receive compensation for handling vNXX traffic, and what rate should apply.

Mr. Price stated that "Virtual NXX" or "vNXX" is an arrangement whereby a telephone number is assigned to a customer associated with a rate center other than the one that corresponds to his physical location. A call delivered to an end user located outside the local calling area to which the call's NXX is associated is vNXX traffic. VNXX numbers are often assigned to Internet Service Providers ("ISPs") in order to allow the ISP to serve internet users outside the ISP's local calling area without subjecting such users to toll charges.

Mr. Price observed that the FCC intends to decide the issue of vNXX compensation in its ongoing Intercarrier Compensation Rulemaking.[1] Therefore, any solution reached in this arbitration will necessarily be interim, pending nationwide action by the FCC. Thus, the ICA should implement the FCC's vNXX compensation regime following its adoption. Until the FCC acts, Mr. Price urges the Commission to resolve the Parties' dispute about vNXX compensation as part of this arbitration.

According to Mr. Price, Embarq takes the traditional ILEC position that it should be paid switched access rates for handling vNXX traffic. As Mr. Price explained, this position is rooted in the ILEC's historical status as an exchange access provider to interexchange carriers ("IXCs"). In the exchange access arena, ILECs receive access charges for the functions they provide to originate jurisdictionally interexchange "toll" calls, so they contend that access charges should also apply to interexchange vNXX calls. ILECs have also expressed concerns that vNXX calling may increase the amount of traffic for which the ILEC is providing a substantial amount of transport, especially if the CLEC has just one point of interconnection ("POI") in the Local Access and Transport Area ("LATA").

Mr. Price stated that the traditional CLEC perspective (which Verizon has not taken in this proceeding) is that vNXX calls are local, so the CLEC should receive reciprocal compensation for terminating them. To support this view, CLECs cite the fact that calls to numbers assigned to the same rate center are typically rated as "local" for retail billing purposes. CLECs also emphasize that their networks have many fewer switches than the ILECs' legacy networks. Therefore, a single CLEC switch may serve an area comprising a number of ILEC exchange areas, and the CLEC switch often contains many more NPA-NXX codes than reside in a single ILEC switch.

[1] *Id.* at 13, *citing Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 16 FCC Rcd 9610, at ¶ 115 (2001) and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, at ¶ 15 n. 48 (2005).

Mr. Price testified that Verizon's proposal reflects a market-based solution that is different than either the traditional CLEC or the traditional ILEC positions. The foundation of this approach, according to Mr. Price, is a trade-off in which the CLEC receives some compensation for handling vNXX calls originated by the ILEC, in exchange for the CLEC's commitment to accept greater responsibility for transporting the traffic from the ILEC's originating end office. Verizon proposed to Embarq the same type of vNXX compensation arrangement here that it implemented region-wide with SBC (prior to the January 2005 announcement of SBC's merger with AT&T), and with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger), and, most recently, with BellSouth in all of its states.

Under this arrangement, Mr. Price explained that if the parties have at least one POI for exchange of traffic in each ILEC tandem serving area where Verizon assigns telephone numbers to its customers, the compensation rate for dial-up Internet vNXX traffic is $0.0007 per minute of use (the same as the FCC's default rate for Internet service provider ("ISP")-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area). As Mr. Price observed, this level of compensation is several times lower than the reciprocal compensation rates the Parties agreed to in the new ICA, which reflects reciprocal compensation Rates for local end office switching at $0.003227 per minute of use ("MOU"); local tandem switching at $0.002760 per MOU; and local shared transport at $0.002641 per MOU. In LATAs where the parties do not have a POI in each of the ILEC's tandem serving areas, vNXX traffic (voice, as well as ISP-bound) would be exchanged on a bill-and-keep basis[2] under Verizon Access's proposal.

Mr. Price stated that this compromise solution mirrors the arrangements a number of ILECs and CLECs have agreed to use. These multi-state agreements avoid the uncertainty of disparate, state-specific outcomes that may result from litigation; they eliminate billing and invoicing problems for multi-state carriers; they allow parties to appropriately weigh their own business interests; and they obviate the need for state commissions to decide difficult, controversial issues about the nature of vNXX traffic.

Mr. Price contended that the Commission should reject Embarq's traditional ILEC position with respect to vNXX traffic because it appears to be inconsistent with Embarq's own practices. Specifically, Mr. Price asserted that Embarq does not appear to be applying to its own Internet access service the compensation principles it urges the Commission to adopt in this case. As it did in the Verizon Access/Embarq Minnesota arbitration, Embarq argues in this case that the physical location of the calling and called parties always determines compensation—that is, any call, including a vNXX call to an ISP, that originates and terminates in different local calling areas is subject to access charges. A call would be considered "local" (and not subject to access charges) only if the ISP's servers are located in the same local calling area as the customer calling the ISP.

Mr. Price testified that Embarq partners with EarthLink, a nationwide ISP, in providing a "co-branded" dial-up Internet access service. With respect to that service, however, Embarq

[2] "Bill and keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating traffic that originates on the other party's network.

appears indifferent to the location of EarthLink's modem banks and servers, so access (and toll) charges would not necessarily apply to vNXX calls to the Embarq/EarthLink service. In other words, while Embarq expressed concern over the potential loss of access charges when Verizon's network is used to provide dial-up Internet service using vNXX arrangements, Embarq did not have the same concerns for dial-up traffic destined for EarthLink's network. Embarq's failure to adhere to the compensation principles it urges the Commission to impose upon Verizon undermines Embarq's credibility and raises discrimination concerns. In this regard, adopting Embarq's position would allow it to favor its own co-branded dial-up Internet service by adding significantly to the cost—to Verizon—of providing a competing service.

Mr. Price further testified that in order to determine how Embarq treats the dial-up traffic to EarthLink, he reviewed the website where customers and prospective customers can determine what numbers they would dial to reach the Embarq/EarthLink service. In one example, he was able to determine that Embarq customers in Warsaw have at least two "local" telephone numbers that can be used for dial-up Internet access. Copies of the screen shots showing the numbers that allow customers to reach the co-branded Embarq/EarthLink service by dialing a "local call" were attached to Mr. Price's testimony. Mr. Price stated that because Embarq acknowledged in the Minnesota arbitration that it is not concerned about the location of EarthLink's modem banks and servers, he did not believe that Embarq knows or cares if EarthLink has any modem banks or servers located in its service territory in Indiana.

Mr. Price provided a second example in which he inquired as to service in Plymouth, an Embarq exchange east southeast of Gary. Again, the website provided an access number for the co-branded Embarq/Earthlink service and showed that number to be "local" to Embarq's customers in Plymouth. Copies of the screen shots showing Mr. Price's inquiry and the resulting "local" numbers were attached to Mr. Price's testimony. Mr. Price noted that he discussed with Verizon network planners the likelihood that an EarthLink modem bank or server is located in either Warsaw or Plymouth, and stated that the consensus is that it would be highly inefficient to place such equipment in either of those areas. That is because the equipment available today to provide the network modem functionality is high-density equipment, designed for placement in locations where it can be used for a concentration of traffic over a wide geographic area. Mr. Price noted that while he had not been able to confirm whether EarthLink has a modem bank or server in the Warsaw or Plymouth exchanges, such a result would be highly inefficient from a network engineering perspective and is thus highly unlikely. These facts, Mr. Price asserted, cast serious doubt on how consistently Embarq is applying its "policy" that the location of the modem bank and server is important in determining whether a call is "local."

Mr. Price invited Embarq to prove his presumption wrong, noting that Embarq could submit in its rebuttal testimony documents demonstrating that Embarq is consistent in applying access to ISP-bound calls where the calling party and the ISP's server are not both located in the same local calling area as its Warsaw and Plymouth exchanges. Mr. Price urged Embarq to demonstrate that Earthlink has servers located in both its Plymouth and Warsaw or, if no such demonstration was possible, Embarq certainly would have been able to produce documentation that Embarq has assessed access charges for calls to the Earthlink access numbers in Plymouth and Warsaw. Mr. Price posited that if Embarq did not provide such documentation in this proceeding, the only reasonable conclusion is that Embarq is discriminating against Verizon and in favor of its business partner.

b. *Embarq*

Embarq witness Jeff Lindsey testified in support of Embarq's position on Issue 1. Mr. Lindsey explained that vNXX allows a CLEC to assign a telephone number to a customer within a local calling area regardless of the physical location of the customer. CLECs, such as Verizon Access, frequently make use of vNXX dialing arrangements to assign telephone numbers to internet service providers ("ISPs") so that regardless of the ISP's location, the calls are perceived and billed as local calls. Embarq believes that Verizon Access has provided ISPs with vNXX dialing arrangements so that Embarq end-users may dial a local number to reach an ISP that is physically located outside an Embarq local calling area.

Mr. Lindsey noted that the parties disagreed regarding appropriate intercarrier compensation for the exchange of vNXX-enabled traffic. Embarq believes that intercarrier compensation should be determined based on the physical location of the calling and called parties, and not based on the NPA/NXXs of the parties. Therefore, according to Mr. Lindsey, if a call originates in an Embarq local calling area and terminates in a different local calling area, it is deemed interexchange traffic and Embarq is entitled to receive originating access charges. To do otherwise would result in Embarq's subsidizing Verizon's toll-free, dial-up business.

Mr. Lindsey testified that CLECs typically argue that vNXX-enabled, ISP bound traffic is subject to reciprocal compensation under the Telecommunication Act of 1996. Even though Verizon Access has demanded a lower rate from Embarq, Verizon's so-called compromise position is flatly inconsistent with the historical end-to-end analysis that has been applied to calls to determine appropriate intercarrier compensation. Verizon would improperly have Embarq pay Verizon for terminating traffic that is interexchange traffic and for which Embarq should receive originating access.

Mr. Lindsey explained why CLECs like to utilize vNXX arrangements and why that can be unfair to an ILEC. By using vNXXs, a CLEC can assign telephone numbers to ISPs so that calls to the ISP are perceived and billed as local calls, regardless of the physical location of the ISP. Doing this provides an advantage to both the CLEC and its ISP customer. The ISP can offer all its subscribers a local call even though the ISP is located outside the callers' local calling area. The CLEC can benefit because the traffic appears "local," creating a potential revenue stream for the CLEC. But the ILEC suffers because it will incur a greater transport cost to deliver the call to the CLEC's point of interconnection ("POI"). Thus, the originating ILEC not only incurs unjustified and greater network costs to deliver a vNXX-enabled call, the ILEC may also incur an obligation to pay compensation to the terminating CLEC. That is inappropriate because the traffic is interexchange, and the ILEC should be receiving originating access charges.

Mr. Lindsey noted that the Commission has previously concluded that vNXX-enabled traffic including that which is ISP-bound, is interexchange traffic for intercarrier compensation purposes. Mr. Lindsey cited to this Commission's decision in a 2004 arbitration between Indiana

Bell Telephone Company, Inc. and Level 3 Communications. In that case, this Commission agreed with Indiana Bell that traffic should be rated by geography, not based on telephone numbers. Mr. Lindsey also noted that this Commission's decision is consistent with a very recent decision (2007) from the Public Utilities Commission of Ohio in an arbitration between Embarq and Verizon.[3]

Furthermore, Mr. Lindsey referred to several federal appellate decisions in which the courts concluded consistently with Embarq's position that vNXX-enabled traffic is not local traffic and that the originating ILEC is entitled to access charges.

Mr. Lindsey testified that Embarq's position is reasonable because no carrier should be allowed to assign a local number to a customer physically located outside the local calling area and expect to receive terminating compensation. The historic end-to-end analysis confirms that calls terminating outside the local calling area are not local for intercarrier compensation purposes. Because, for such a call, Verizon Access is acting as an interexchange carrier ("IXC") in providing an interexchange call to its customer, Embarq should receive originating access while Verizon Access should receive no terminating compensation. Finally, Mr. Lindsey described the nature of the traffic exchanged between the parties. He testified that the traffic is extremely imbalanced with more than 98% of the traffic originating with Embarq end-users and terminating to a Verizon end-user. Embarq therefore believes that all this traffic is ISP-bound and likely vNXX-enabled. Further, a considerable amount of this traffic originates from an end office where Verizon has not established a direct connection to Embarq. Because that requires Embarq to route the traffic via an RBOC tandem, Embarq has potential exposure to additional network costs as a result of RBOC charges.

In order to properly measure the traffic, Mr. Lindsey proposed utilizing a factor in the interconnection agreement to fix the percent of Embarq-originated and Verizon-terminated traffic that is vNXX-enabled.

Mr. Lindsey concluded that the correct resolution for Issue 1 is to require Verizon to pay Embarq originating access for any interexchange traffic originated by Embarq end-users. This is the appropriate resolution because when Verizon uses a vNXX numbering scheme to provide service to its ISP customers, it is offering a toll free interexchange service and acting essentially as an IXC.

c. *Verizon reply testimony on Issue 1.*

According to Mr. Price, Embarq witness Mr. Lindsey incorrectly portrayed the facts with respect to compensation for vNXX ISP-bound traffic. Mr. Lindsey asserts that ISP calls are no different from any other calls traveling beyond the local exchange, so Verizon is required to pay access, not reciprocal compensation, on such calls.

First, Mr. Price noted that Mr. Lindsey assumes that ISP traffic is no different from traditional voice traffic, which has clearly identifiable originating and terminating points. Mr. Price observed, for example, when Aunt Martha in Warsaw calls her nephew who lives in

[3] PUCO Case No. 06-1485-TP-ARB, Order on Rehearing (July 25, 2007)

Indianapolis, the call originates at Aunt Martha's home in Warsaw and terminates at her nephew's home in Indianapolis. Identifying these end points is part of carriers' normal, day-to-day operations, and carriers use well understood industry practices every day to record the end points of millions of voice calls.

According to Mr. Price, as the Federal Communications Commission ("FCC") and the Courts have recognized, there is no defined end point where ISP traffic "terminates." As Mr. Price noted, during a given session Internet users typically visit sites—such as news portals, music and/or video download sites, sites for watching streaming video (such as YouTube), email servers, chat servers, blog sites, and so on—that are located from coast to coast and often overseas.

Mr. Price testified that, contrary to Mr. Lindsey's testimony, the "historic end to end analysis" does not require Verizon to pay access on vNXX traffic. He stated that Mr. Lindsey's suggestion that there is no ambiguity as to the proper compensation for vNXX traffic ignores the fact that, in its Notice of Proposed Rulemaking in 2001, the FCC sought comment on issues related to the use of vNXX. And in 2005, the FCC reiterated its intention "to address the compensation regime for all types of traffic, including ISP-bound traffic" in its intercarrier compensation rulemaking. According to Mr. Price, if there were no ambiguity as to the appropriate compensation for vNXX ISP traffic, as Mr. Lindsey implies, there would be no issue for the FCC to address.

Mr. Price stated that the implication that ISP traffic is the same as voice traffic is belied by provisions of the ICA to which Embarq has agreed. In Part F of the ICA, §§ 54.1.1 and 54.1.2 designate ISP traffic as a specific traffic type unto itself. There, the Parties identify the types of traffic that can be sent using "two-way trunks for the reciprocal exchange" of traffic, stating as follows:

> 54.1.1 The Parties shall make available to each other two-way trunks for the reciprocal exchange of combined Local Traffic, ISP Traffic and non-equal access IntraLATA toll traffic.
>
> 54.1.2 Separate two-way trunks will be made available for the exchange of equal-access InterLATA or IntraLATA interexchange traffic.

Mr. Price observed that these sections of the ICA clearly reflect the parties' agreement that ISP traffic is not the same as traditional voice traffic. If it were, he stated ISP Traffic would not be identified as a type of traffic to be distinguished from InterLATA and IntraLATA traffic.

In addition, Mr. Price noted two cases that Embarq cited in support of its position do not stand for the proposition that Embarq claims. Specifically, the First and Second Circuits did not decide that ILECs are "entitled to originating access" on vNXX calls, as Mr. Lindsey suggests. The First Circuit agreed that the FCC did not expressly preempt state regulation of intercarrier compensation for non-local ISP-bound calls, leaving the Massachusetts commission free to (but not required to) impose access charges for such calls under state law.[4] The Second Circuit held that state commissions have the authority to define local calling areas with respect to intercarrier compensation, but did not address the question of what compensation applies: "Whether [state commissions] have authority to impose access fees on ISP-bound traffic is for another day and for clarification by the FCC."[5] Mr. Price noted that nothing in these cases preempts the Commission from adopting the compromise compensation approach Verizon has proposed here—and, in fact, the Commission already has adopted it in negotiated agreements.

Mr. Price points out that Embarq has mischaracterized Verizon Access's proposal as seeking reciprocal compensation for vNXX traffic. Verizon is advocating neither the traditional CLEC position nor the traditional ILEC position with respect to compensation for vNXX calls. Contrary to Embarq witness Lindsey's misrepresentations, Mr. Price does not contend that VNXX-enabled, ISP-bound traffic that it terminates from Embarq is subject to reciprocal compensation charges under Section 251(b)(5) of the Act, and is not asking the Commission to rule that vNXX calls are local. According to Mr. Price, one of the advantages of Verizon's proposal is that it is not linked to specific legal definitions, so it avoids the usual debates about the nature of vNXX traffic (such as trying to identify the "endpoint" of an ISP-bound call). It simply applies a specified level of compensation (not reciprocal compensation) to vNXX traffic if certain conditions are met. This type of compromise approach has been implemented by carriers across the country, without any regulatory compulsion. Such a market-based solution moves away from the polarized win-lose paradigm of regulatory decision-making and obviates the need to resolve the thorny regulatory issues that have caused so much litigation in recent years. Mr. Price testified the fact that a number of sophisticated carriers (including Sprint) voluntarily adopted the type of approach Verizon proposes is the best proof that it appropriately balances their interests with the ILECs' interests.

Mr. Price challenged as unfounded Embarq's claim that Verizon Access's proposal could force Embarq to provide a substantial amount of transport to potentially distant points of interconnection at its own cost. Verizon Access's proposal specifically addresses this concern because Verizon Access will receive no compensation for handling vNXX traffic where it does not establish a POI in the Embarq access tandem serving area. In addition, Mr. Lindsey's expression of concern is contradicted by language in the ICA in which Embarq agreed that ISP traffic would utilize the same two-way trunk groups as Local Traffic. (ICA, at § 54.1.1.) As a result of this provision, Mr. Price stated that Embarq has already agreed to incur a transport burden, most likely outside the local calling area, for ISP traffic.

Furthermore, Mr. Price asserted, in an arbitration between FDN Communications and Sprint, Embarq's predecessor company in Florida, Sprint itself argued that "establishing a POI at each tandem is the best approach to establish efficient interconnection arrangements and ensure a reasonable sharing of costs incurred to transport traffic between the parties."[6] According to Mr.

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[4] *Global NAPS, Inc. v. Verizon New England, Inc., Mass. Dep't of Telecomm. and Energy*, 444 F.3d 59, 61 (1st Cir. 2006).
[5] *GNAPs v. Verizon New England*, 454 F.3d 91, 99 (2d Cir. 2006).
[6] *Petition for Arbitration of Certain Unresolved Issues Associated With Negotiations for Interconnection, Collocation and Resale Agreement with Florida Digital Network, Inc. by Sprint-Florida Incorporated*, Order No. PSC-06-0027-FOF-TP, 06 FPSC 1:50, at 81 (Jan. 10, 2006) ("*Sprint/FDN Arbitration Order*").

Price, this "reasonable sharing of costs" is exactly what Verizon Access's vNXX compensation proposal would achieve.

Despite Embarq's refusal to consider moving off the traditional ILEC position that access should apply to vNXX calls, Mr. Price testified negotiated intercarrier compensation agreements are clearly the industry trend. They are certainly a better alternative to the protracted, expensive litigation that has long been associated with vNXX compensation issues.

Mr. Price observed that Embarq's traditional ILEC position regarding compensation for vNXX traffic is inconsistent with Embarq's interconnection agreement with Level 3 Communications, a negotiated agreement that Embarq submitted to this Commission on September 26, 2006. That agreement requires Embarq to pay Level 3 when Embarq customers originate vNXX ISP-bound traffic that terminates to Level 3 vNXX numbers. Specifically, section 55.1 of the agreement provides:

> 55 .1 Local Traffic and ISP-Bound Traffic exchanged by the Parties shall be compensated at $ .0004 per minute use. ISP-Bound Traffic includes ISP-Bound traffic provisioned using virtual NXXs.[7]

Thus, Mr. Price concluded, based on Embarq's agreement with Level 3, it appears that Embarq believes compensation for ISP-bound vNXX traffic is acceptable for certain carriers, but not for Verizon Access.

Mr. Price noted that Embarq witness Lindsey misrepresented a vacated Indiana Commission order as precedential and an Ohio order as a final resolution of a Verizon/Embarq arbitration when that proceeding was terminated as moot.

First, Embarq cited a Commission decision in a Level 3/SBC proceeding asserting that the Commission determined that access charges should apply to vNXX traffic. According to Mr. Price, that decision does not exist because it was vacated by the Commission at the request of SBC and Level 3. He stated after the Commission issued the decision upon which Embarq relies, Level 3 and SBC reached a compromise agreement, much like the compromise agreement that Verizon Access urges the Commission to adopt here, and subsequently filed a joint motion to approve the negotiated compromise agreement and vacate the arbitration decision. The Commission granted the motion and vacated the order finding:

> The Motion presents us with a unique question. Although we would not normally entertain this type of motion in a more typical Commission proceeding, the arbitration process lends itself to consider this request. We agree that in order to avoid improper future use of our arbitration decision in this Cause, we should grant the Motion to Vacate the Order.[8]

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[7] Master Interconnection, Collocation and Resale Agreement for the State of Indiana between Level 3 Communications, LLC and United Telephone Company of Indiana, Inc. d/b/a Embarq (filed with the Indiana Utility Regulatory Commission Sept. 26, 2006 in Case No. 40912-INT-98 ND, deemed effective Nov. 2, 2006), at § 55.1.
[8] *In re Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms,*

Mr. Price testified that the Commission vacated the SBC/Level 3 to avoid reliance on it as precedent. Mr. Price opined that rather than supporting Embarq's position, the Level 3/SBC case bolsters Verizon's position that its compromise approach to compensation for vNXX traffic is consistent with the industry trend and is the best option.

Moreover, even if the Level 3/SBC order had not been vacated, Mr. Price stated it would not provide useful guidance to the Commission in this case. As he observed, the vacated decision was based on the facts in that proceeding. The facts in this case are different. Level 3 did not claim that SBC was treating Level 3 differently than SBC was treating its own co-branded dial-up internet access service. According to Mr. Price, the facts demonstrate that Embarq markets a co-branded dial-up internet access service with a nationwide ISP that provides "local" numbers that customers can use to access that service. Level 3 also took the traditional CLEC position that vNXX ISP traffic should be subject to reciprocal compensation under 251(b)(5) of the Act, which is not the position that Verizon Access takes in this proceeding. According to Mr. Price, the facts and the positions of the parties in this case are different than the facts and positions of the parties in the Level 3 case.

Second, Embarq suggested that the Public Utilities Commission of Ohio required Verizon Access to pay access charges to Embarq for vNXX traffic in Ohio. According to Mr. Price, Embarq erroneously characterized the Ohio proceeding and failed to mention that the Verizon/Embarq arbitration in Ohio was terminated as moot, without any final Commission resolution, because Verizon adopted the existing interconnection agreement between Embarq and AT&T. He also stated Embarq failed to mention that the Embarq/AT&T agreement requires Embarq to pay compensation for vNXX traffic. Mr. Price noted the situation in Ohio further demonstrated the prevalence of agreements that contain some compromise between the traditional CLEC and ILEC positions on vNXX traffic.

Mr. Price stated that the administrative law judge ("ALJ") in the Verizon Access/Embarq arbitration in Minnesota issued a recommended decision in November 2007 adopting bill-and-keep compensation for exchange of ISP-bound vNXX traffic when the ISP does not have a server in the same local calling area as the caller. Among other things, the ALJ found "that consumers expect to be able to access their ISPs by dialing a local number and that if access charges are applied to ISP-bound dial-up traffic, it would discourage such use and make it uneconomic for ISPs to serve communities where they do not have a physical presence. This is not in the public interest." Mr. Price suggested that if the Commission here is reluctant to adopt Verizon's compromise proposal, a bill-and-keep approach would be the next-best interim solution until the FCC establishes a compensation mechanism.

d. *Embarq reply testimony on Issue 1.*

Embarq witness Jeff Lindsey responded to Mr. Price's direct testimony on Issue 1. He asserted that the historical end-to-end analysis remains the rule and should continue to be used to

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and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a/ SBC Indiana, Cause No. 42663-INT-01, Order on Motion to Vacate, March 16, 2005 ("Order Vacating Arbitration Decision"), at 3 (emphasis added).

determine if a call is local or non-local. He argued that using vNXX dialing patterns may provide the appearance of a local call, but the situation is simply that: an *apparent* local call. But that type of call is, in reality, an interexchange call and should generate originating access charges. Mr. Lindsey noted that other dialing patterns that complete a call between the same non-local end points used for a vNXX call properly reflect the non-local nature of the call. If the same call were originated on a 1+ or 1+8XX ("toll free") basis, originating access charges would be paid. Mr. Lindsey rebutted Mr. Price's claim that if Verizon were required to pay access charges on vNXX calls, then dial-up internet calls become subject to toll charges and customers are not likely to reach their ISPs through dial-up access. Mr. Lindsey noted that carriers that provide the retail service have the option of whether to access toll charges to their retail customers regardless of whether access charges are applied to the call. He noted that bundled retail consumer offerings increasingly include unlimited nationwide calling, in addition to local calling, vertical services such as caller ID and voicemail, and high speed internet services. The inclusion of unlimited toll calling in the bundle occurs despite the fact that access charges are applied to interexchange calls.

Mr. Lindsey also disputed Mr. Price's position that requiring originating access charges would end the dial-up internet market. Mr. Lindsey explained that many CLECs provide service to ISPs and, if any one CLEC would stop providing service because of originating access charges, other CLECs stand ready to provide the service.

Mr. Lindsey also challenged Mr. Price's description of the relationship between EarthLink and Embarq. He explained that the co-branded service to which Mr. Price refers is simply a marketing arrangement in which Embarq co-brands EarthLink's retail dial-up ISP service. The agreement between Embarq and EarthLink contains no provisions regarding wholesale terms and conditions. Mr. Lindsey further explained that ISPs purchase retail services from CLECs, but that wholesale terms and conditions apply between carriers. Like any ISP, EarthLink is free to use the services of any carrier, but that carrier must have an interconnection agreement with Embarq for the exchange of traffic. Embarq does not know which CLEC EarthLink uses, but EarthLink may use any carrier, including Verizon. And if Verizon believes that it's being discriminated against vis-à-vis the CLEC serving EarthLink, Verizon has the option to opt into the entirety of whatever interconnection agreement EarthLink has with another CLEC.

Mr. Lindsey also rebutted Mr. Price's contention that Embarq's position that originating access charges should apply is inconsistent. Mr. Lindsey explained why the Embarq/EarthLink relationship is irrelevant to this arbitration and to interconnection agreements in general. Because EarthLink is an ISP and not a CLEC, Embarq does not have an interconnection agreement with EarthLink. That fact alone rebuts any claim by Verizon that Embarq is discriminating against Verizon with respect to an interconnection agreement. Mr. Lindsey concludes that Embarq's position has been and remains consistent that originating access charges are the correct public policy prescription for non-local vNXX calls.

2. Commission Decision on Issue 1.

In order to determine Issue 1, we must first analyze the nature of the calls that are at issue. These vNXX-enabled, ISP-bound calls typically originate with an Embarq end-user and terminate to an ISP which is Verizon's customer. The ISP has a physical presence outside the local calling area of the Embarq end-user who originates the call. We agree with Mr. Lindsey that the "localness" of the call should be determined by the physical locations of the calling and called parties, not the numbers dialed. To do otherwise would exalt form over substance. Although we are mindful of Mr. Price's contention that it may be difficult to determine precisely where an ISP-bound call terminates, we determine that, when the call reaches an ISP whose server is located outside the Embarq customer's local calling area, the call is a non-local call.

This Commission previously addressed this issue in the Level 3 Communications and SBC Indiana arbitration. *In re Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana*, Cause No. 42663-INT-01 (Order, December 10, 2004) ("Level 3/SBC Arbitration Order"). Although the Commission later vacated that order because the parties were able to negotiate an interconnection agreement, we find our analysis in that Cause is applicable in the present case.

As we stated in the Level 3 Arbitration Order:

> [W]e approve SBC's proposed definition . . . and in particular SBC's proposal to rate traffic by geography, rather than solely by telephone numbers (as Level 3 proposes). Under the FCC's rules, Section 251(b)(5) reciprocal compensation applies 'only to traffic that originates and terminates within a local area,' while 'all traffic' that travels to points, both interstate and intrastate within the local exchange' is subject to access charges.

Id. at 71.

We therefore conclude that the calls in question, vNXX-enabled calls that terminate outside the local calling area of the party originating the call, are not local calls for the purpose of intercarrier compensation and access charges, instead, should apply. Embarq's proposed language on this issue is adopted for insertion into the parties' interconnection agreement.

B. ISSUE 2: Where Verizon is not purchasing UNE loops or resold services from Embarq, should Embarq be permitted to charge Verizon a monthly charge for "maintenance and storage" of customers' basic directory listing information that is based on Embarq's tariffed rate for maintaining and storing additional directory listings?

1. <u>Positions of the Parties</u>.

a. *Verizon.*

Mr. Price explained Verizon's position on Issue 2, stating that where Verizon is not purchasing UNE loops or resold services, Embarq proposes to assess two types of directory listing charges on Verizon. The first charge is a nonrecurring charge for processing directory listing service orders. Verizon has agreed to pay that charge. The second charge is a monthly recurring charge for maintaining and storing the directory listings in Embarq's database, a rate of $3.00.

Mr. Price suggests that according to "standard industry practice," most ILECs do not charge either their retail customers or interconnecting CLECs for storing a "basic" directory listing, because the costs of providing the listing may be covered by other charges, such as the nonrecurring service order fee. Mr. Price's understanding is that the ILEC typically has an economic incentive to not charge for storing basic directory listings because any costs associated with them are offset by benefits the ILEC receives for maintaining as comprehensive a database as possible. Mr. Price states the ILEC typically contracts with a directory publisher to publish the directory listings and to distribute them to all customers within its service area. From the publisher's point of view, the usefulness of the directory, and therefore the value of the advertising that the publisher includes in the directory, is diminished if the listings received from the ILEC are not comprehensive. He alleges that the ILEC can typically strike a better deal with the directory publisher if it can offer a more valuable database to the publisher, and maintaining a comprehensive set of directory listing information enhances its value.

Mr. Price implied that Embarq's directory listing charge is unjustified because it has an incentive to maintain the data regardless of whether it is compensated; it proposes to charge undisclosed rates by reference to retail tariffs for a different service; it has not demonstrated that costs it incurs with respect to directory listing are not fully recovered by the nonrecurring charge that Verizon has already agreed to pay; and its proposed fee is discriminatory since it must provide CLECs with nondiscriminatory access to directory listings. He notes that Embarq's interconnection agreement with Neutral Tandem provides one basic White pages listing for each CLEC customer located within the geographic scope of its White Page directories, at no additional charge.

b. *Embarq.*

Embarq witness Dr. Staihr provided an explanation of the issue: when a CLEC buys wholesale services or products from Embarq such as residential dial tone or an unbundled loop, Embarq does not charge the CLEC separately for providing a directory listing for the CLEC's end users. However, when a CLEC does not buy any products or services from Embarq, but still wants Embarq to provide a directory listing for its end users, Embarq has proposed that Verizon should pay for this directory listing service with a separate monthly recurring charge. Verizon does not want to pay this charge.

Dr. Staihr described the marketplace economics on this issue. On the demand side, Verizon is demanding the placement of its customers' listings in the directory. On the supply side, the publisher R.H. Donnelley supplies this service. Verizon has the choice of 1) dealing with R.H. Donnelley directly to have its customers listed, or 2) using Embarq as an intermediary provider to arrange for Verizon's customers to be listed. Dr. Staihr stated that he personally verified that Verizon has the option of by-passing Embarq and dealing directly with R.H. Donnelley.

Dr. Staihr explained that given Verizon's ability to deal directly with the publisher to obtain access to directory listings, it cannot be considered a "captive" customer and has alternatives. Consequently, marketplace forces are the most effective and efficient way to establish prices in this market. Because Verizon has the option of dealing directly with R.H. Donnelley, Embarq does not have a monopoly on access to directory listings. As a result, standard marketplace dynamics dictate that Embarq should offer its services at a price that: reflects the value that Embarq feels Verizon places on the service, and enables Embarq to meet or compete for any demand for its service. Verizon is free to accept or reject that market-based price.

Dr. Staihr explained that a market-based price is a function of the value that customers perceive in the good, which is a function of demand. In two markets with different demand conditions, the market-based price could be very different even if the costs of the product are identical.

Dr. Staihr noted the Act's requirement for all LECs to provide non-discriminatory access to directory listings to competing carriers upon request, but emphasized that the FCC chose not to subject the directory listing to the total element long run incremental cost ("TELRIC") pricing standard that was applied to other LEC obligations. Therefore the FCC did not preclude or prohibit LECs from charging a market-based price for their directory listing. Furthermore, Embarq is required to offer the competing carrier access "that is at least equal in quality to that of the providing LEC" and if Verizon chooses to utilize Embarq, Verizon's listings will flow through the same processes that Embarq's own listings flow and be published in the same directory, ensuring that the treatment is the same and equal in quality.

Dr. Staihr testified that it is Embarq's policy to charge all similarly-situated carriers the same market-based rate, but that implementing this policy requires time. Previous interconnection agreements may have addressed this issue differently. He stated it is impossible to re-visit every existing interconnection agreement instantaneously. However, the decision by Embarq to adjust its policy on a going-forward basis and to apply that policy going-forward in a non-discriminatory manner to all similarly situated CLECs who negotiate new agreements fulfills Embarq's obligation to treat carriers in a non-discriminatory manner.

Dr. Staihr expounded on the appropriateness of a market-based approach: if a willing buyer and a willing seller agree on a price, the transaction will occur. For access to directory listings, Verizon can provide itself with access to directory listings: by dealing directly with R.H. Donnelley; by purchasing the service from an intermediary such as Embarq; or by utilizing its recently spun-off company Idearc. A market-based approach here is the best approach for the same reason that we deregulate any service when there are alternatives and substitutes; as wellintentioned and effective as regulation can be, regulation is less effective and less efficient than the market itself at determining value and establishing efficient, accurate prices. In terms of the marketplace dynamics surrounding this issue, the stand-alone service being requested by Verizon is similar to the stand-alone service that is available to some customers who desire to purchase foreign listings (also known as foreign exchange listings or "FX") for which a monthly recurring charge is billed. In the FX example and the issue at hand, customers who are not Embarq customers desire a listing in an Embarq directory, but are not buying other products or services from Embarq. It is appropriate to charge for the service (the listing) because the demanding party perceives value in being placed in the Embarq directory.

c. *Verizon Reply Testimony on Issue 2.*

Mr. Price responded to Embarq witness Dr. Staihr's direct testimony on Issue 2. Mr. Price opined that Embarq's proposal for a monthly charge is unique, that Dr. Staihr does not explain what activities or functions this fee covers, that the directory fee proxy of a "foreign exchange ("FX") listing" was not set through market forces, but arbitrarily picked by Embarq. Mr. Price further claimed that the FX listing rate is not reasonable because Dr. Staihr had not explained what functions are covered by the charge; TA 96 entitles Verizon to non-discriminatory access to directory listing service, while a retail customer has no statutory right to an FX listing; Verizon has agreed to pay a non-recurring service order charge of $7.44; and that the FX listing tariff seems to assume that the customer is taking telephone service from Embarq.

Mr. Price argued that the dispute is about whether Embarq should be allowed to charge a proposed monthly directory fee, not whether it should be cost-based or market-based and the proposed directory listing charge is arbitrary and unreasonable. Mr. Price contended that as confirmed in Minnesota, all directory publishers or telephone companies that wish to purchase any white page directory listings in Embarq's listing database are billed the FCC's subscriber list information ("SLI") rate of $0.04 per initial listing and $0.06 for updated listings.

Mr. Price challenged Dr. Staihr's rationale for a market-based rate by disputing that Verizon can either publish its directory listings itself or deal directly with a directory publisher and insinuating that Verizon Access does not have the technical capability to transmit its own customer directory listings to directory publishers. Regarding Verizon's ability to self-provision, Mr. Price believes that Embarq enjoys an economy of scale that Verizon cannot duplicate and would have a higher per listing cost. He contends that if Verizon were to attempt to enter the business of providing its listings directly to the publisher, it would not be able to compete with Embarq on a level playing field.

Mr. Price reiterated that the Minnesota ALJ recommendation did not accept Embarq's monthly directory listing charge and pointed to his testimony that available alternatives are not of the same quality as that which Embarq provides to itself and its customers.

d. *Embarq reply testimony on Issue 2.*

Embarq witness Dr. Staihr responded to Mr. Price's direct testimony on Issue 2. Dr. Staihr rebuts Mr. Price's claim that Embarq's proposed price is "unjustified" because Embarq has an incentive to maintain and store the data regardless of whether it is compensated and that the ILEC can ""strike a better deal" with the directory publisher if it can offer a more comprehensive database to the publisher that includes CLEC listings such as Verizon's listings.

Dr. Staihr points out that the claim is incorrect and really impossible because Embarq's "deal" with its publisher R.H. Donnelley took place in January 2003 and expires in the year 2052. Therefore, Mr. Price's claim that the value of the deal with Donnelley was affected (or is affected, or could be affected) by the inclusion or exclusion of Verizon's directory listings is mistaken and the "benefits" to Embarq that Mr. Price claims to exist are, in fact, non-existent. If there are any benefits that accrue to either party from having Verizon's customers listed in the directory, those benefits accrue first and foremost to Verizon and if there are benefits that accrue to the *publisher* from having Verizon's listings included in the directory, Verizon should deal directly with the publisher and reap the reward by providing something to Donnelley that Verizon believes Donnelley benefits from and presumably values. In that case, rather than disagreeing over how much Verizon should pay Embarq for providing this service, Verizon could discuss with Donnelley how much Donnelley would pay Verizon for this information. In reality, Embarq receives little benefit from R.H. Donnelley's incorporating CLEC listings into its directory, as demonstrated by the fact that the FCC obligates ILECs to offer the directory listing service.

Dr. Staihr refuted Mr. Price's claims that Embarq "proposes to charge undisclosed rates by reference to retail tariffs for a different service." Dr. Staihr notes that Mr. Price himself, in his own testimony, references the exact rate that is included in Embarq's response to Verizon's Petition for Arbitration.

Dr. Staihr disputed Mr. Price's claim that Embarq has not made a sufficient demonstration regarding the costs of directory listings by indicating that Embarq has no obligation to make a cost demonstration and when the FCC chose to obligate ILECs to offer access to directory listing service they also chose not to obligate ILECs to follow a pricing standard based on costs. As an economist, Dr. Staihr advises that a requirement for a cost demonstration would amount to de facto rate-of-return regulation. According to him, for Mr. Price to attempt to introduce some costing standard into this issue is nothing more than a roundabout way to suggest that there is some return that Embarq should be allowed to earn on its services and because Embarq is not rate-of-return regulated in Indiana, it is inappropriate to base the price for the directory listing service on costs.

Dr. Staihr countered Mr. Price's claim that Embarq's rate is discriminatory because of an existing interconnection agreement with Neutral Tandem in which it is not charged separately for directory listing. As Dr. Staihr discussed in direct testimony, in previous interconnection agreements, the directory listing issue was addressed differently. It is Embarq's policy on a going-forward basis to charge for directory listings. It will apply that policy in a non-discriminatory manner to all similarly situated CLECs who negotiate new agreements.

Dr. Staihr responded to Mr. Price's claim that Embarq is not following "standard industry practice" with regard to directory listings by noting that industry practice is fluid and evolving. He noted that cable CLECs have had success in attracting large numbers of subscribers. It has recently become apparent to Embarq that its interconnection agreements do not provide compensation for some services, such as directory listing service, in situations where the facilities-based CLECs merely interconnect, without purchasing UNEs or resale services. Consequently, Embarq has developed a stand-alone price for directory listings to obtain compensation for a service that Embarq is increasingly being asked to provide on a stand-alone basis. If Embarq were to follow Mr. Price's reasoning, there would be no reason for Embarq or any other ILEC to adjust any position going forward because it would constitute a shift away from "standard industry practice."

2. Commission Decision on Issue 2.

Embarq and Verizon agree that § 251(b)(3) of the Act obligates Embarq to provide non-discriminatory access to directory listings to Verizon. The fundamental issue is the appropriate compensation for that access. The Commission finds it significant that the FCC determined not to subject the directory listing obligation to a TELRIC pricing standard. Therefore, it is not discriminatory for Embarq to charge Verizon a higher rate than it "charges" itself. To find that that constituted discrimination would result in imposing a TELRIC pricing standard indirectly, a result flatly inconsistent with the FCC's decision not to do so, not to mention the inappropriate imposition of rate-of-return or price cap treatment.

Because the rate need not be cost-based, we conclude that it should be set based on market principles. Verizon is not prohibited from contracting directly with the publisher, and therefore, Embarq is not a monopoly bottleneck with respect to this service. If Verizon deems the rate Embarq seeks to charge too high, Verizon can bypass Embarq. We find it immaterial that Verizon's cost of doing so may be greater than the rate Embarq wishes to charge. Finally, we find Verizon's argument that inclusion of Verizon listings inures a significant material benefit to Embarq in its relationship with the directory publisher fundamentally flies in the face of the concept of marginal utility.

Accordingly, we agree with Embarq that a market-based price is appropriate and equitable to both Parties, and accept Embarq's monthly directory listing charge. Embarq's proposed language on this issue is adopted for insertion into the parties' interconnection agreement.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. The disputed issues between the parties are resolved in accordance with the findings and conclusions set forth herein.

2. The parties shall jointly submit for the Commission's approval a single Interconnection Agreement (also referred to as a "conforming agreement") reflecting our resolution of the disputed issues as described in this Order. Such Interconnection Agreement shall be submitted to the Commission as set forth herein by the parties within thirty (30) calendar days following the issuance of this Order.

3. This Order shall be effective on and after the date of its approval.

<u>HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:</u>

APPROVED: MAR 1 2 2008

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission